



BEYOND PESTICIDES

701 E Street, SE ■ Washington DC 20003
202-543-5450 phone ■ 202-543-4791 fax
info@beyondpesticides.org ■ www.beyondpesticides.org

March 29, 2017

Ms. Michelle Arsenault
National Organic Standards Board
USDA-AMS-NOP
1400 Independence Ave. SW
Room 2648-S, Mail Stop 0268
Washington, DC 20250-0268

Re. CACS: Personnel Performance Evaluations of Inspectors (NOP 2027)

These comments to the National Organic Standards Board (NOSB) on its Spring 2017 agenda are submitted on behalf of Beyond Pesticides. Founded in 1981 as a national, grassroots, membership organization that represents community-based organizations and a range of people seeking to bridge the interests of consumers, farmers and farmworkers, Beyond Pesticides advances improved protections from pesticides and alternative pest management strategies that reduce or eliminate a reliance on pesticides. Our membership and network span the 50 states and the world.

It is important to have consistent, thorough inspections that ensure that the requirements of OFPA are met, while not placing undue burden on certifiers or producers when considering changes to the rules. We agree with other stakeholders who maintain that all organic inspectors must be professionally evaluated every year. We believe that performance evaluations of inspectors are necessary to maintain public trust in the organic label and ensure that inspections are accurate, but disagree with the current requirement for on-site, or field inspections for “every inspector, every year” portion of the rule.

CACS Proposal

We support the recommendations of the Certification, Accreditation and Compliance Subcommittee (CACS) as listed in the CACS proposal, with a slight modification to the first (that the training need not be NOP training):

1. All Accredited Certifying Agents (ACAs) attend annual training, and those trainings must include clear direction as to inspector qualifications, continuing education, annual evaluations, and periodic in-field witness audits. If the ACA is unable to attend, it is the ACA’S responsibility to review all training materials.
2. All ACAs must include in their annual contracts with inspectors the number of hours of required continuing education, annual evaluation criteria, periodic in-field witness

audits, and provide a written annual evaluation sent to the inspector with suggestions for improvement.

3. All ACAs must maintain in their files detailed procedures for how annual personnel evaluations of staff and contract inspectors are conducted and include a justification for the frequency of in-field inspections for each inspector.

4. All inspectors must receive a personnel evaluation annually, but an in-field witness audit need only be conducted every three years, or more frequently where concerns have been raised about the individual inspector's work or for a novice inspector.

5. Witness audits should be conducted, preferably by certifier staff, but alternatively, by senior peer inspectors, provided that they have been properly trained in witness audits and are not placed in the position of "evaluating" a peer who is not in their employ.

A Process Issue

The NOSB has proceeded according to established process in seeking to change the NOP instruction (NOP 2027). However, the history presented in the CACS proposal reveals that NOP may have exceeded its authority in issuing and reissuing NOP 2027. NOP 2027, *Instruction: Personnel Performance Evaluations*, first issued August 2, 2013, and revised March 31, 2016, must be issued through notice and comment because it adds legally binding requirements. Such changes cannot be made through Guidance, as NOP has done. NOSB must not move forward with the current proposal, and instead recommend that NOP revoke the Guidance and issue the rule through proper regulatory channels.

NOP has taken enforcement action, issuing noncompliances against certifiers who did not meet the requirement in NOP 2027 to perform in-field evaluations every year. That requirement is not in the regulation (§205.501) that NOP 2027 purports to clarify. Moreover, in eliminating the requirement from NOP 2027, NOP recognizes that the regulation does not include that requirement.

NOP 2027 imposes duties on accredited certifiers that are not required by statute or regulation. As noted in the CACS proposal, these duties require a substantial financial and time investment on the part of the certifiers. While the CACS proposal is less onerous than the previous instruction, it nevertheless imposes costs with the threat of enforcement action for non-performance.

Without NOP 2027, there would be no basis for NOP to enforce the in-field evaluation requirement. The existing regulations are clear that certifying agents must annually evaluate their inspectors, but there are no rules determining how those evaluations must be carried out. With NOP 2027, NOP has established a new legal requirement that imposes an obligation against certifiers. Therefore NOP 2027 must be revoked and issued for public notice and comment.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Shistar". The signature is written in a cursive style with a prominent flourish at the end.

Terry Shistar, Ph.D.
Board of Directors